



January 27, 2006

SENATE BILL No. 338

DIGEST OF SB 338 (Updated January 24, 2006 12:48 pm - DI 106)

Citations Affected: IC 35-43; IC 35-50.

Synopsis: False identification and criminal gang enhancement. Makes it a Class A misdemeanor to possess, produce, or distribute a document not issued by a government entity, that purports to be a government issued identification. Provides that the sentence imposed on a person for committing a felony may be enhanced if the trier of fact determines that the person was a member of a criminal gang at the time of the offense and committed the offense at the direction of or in affiliation with a criminal gang. Provides that the enhancement must equal the sentence for the felony the person is convicted of and that the enhancement may not be suspended.

Effective: July 1, 2006.

Merritt

January 10, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 26, 2006, amended, reported favorably — Do Pass.

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SB 338—LS 7038/DI 107+



January 27, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 338

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-43-5-2.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]: **Sec. 2.5. A person who knowingly or intentionally**
4 **possesses, produces, or distributes a document not issued by a**
5 **government entity that purports to be a government issued**
6 **identification commits a Class A misdemeanor.**

7 SECTION 2. IC 35-50-2-1.4 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2006]: **Sec. 1.4. For purposes of section 15 of this chapter,**
10 **"criminal gang" means a group with at least five (5) members that**
11 **specifically:**

12 (1) either:

13 (A) promotes, sponsors, or assists in; or

14 (B) participates in; or

15 (2) requires as a condition of membership or continued
16 membership;

17 **the commission of a felony or an act that would be a felony if**

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committed by an adult.

SECTION 3. IC 35-50-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.**

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

(1) was a member of a criminal gang while committing the offense; and

(2) committed the felony offense at the direction of or in affiliation with a criminal gang.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal gang as described in subsection (b), the court shall:

(1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or

(2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include expert testimony that may be admitted to prove that particular conduct, status, and customs are indicative of criminal gang activity. The

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- 1 expert testimony may include the following:
- 2 (1) Characteristics of persons who are members of criminal
- 3 gangs.
- 4 (2) Descriptions of rivalries between criminal gangs.
- 5 (3) Common practices and operations of criminal gangs.
- 6 (4) Behavior of criminal gangs.
- 7 (5) Terminology used by members of criminal gangs.
- 8 (6) Codes of conduct, including criminal conduct, of
- 9 particular criminal gangs.
- 10 (7) Types of crimes that are likely to be committed by a
- 11 particular criminal gang.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 338, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "document" insert "**not issued by a government entity**".

and when so amended that said bill do pass.

(Reference is to SB 338 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 2.

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